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Supreme Court of the United States

OCTOBER TERM 1975

NO. 75-958

WARDEN SAM P. GARRISON,
Central Prison, Raleigh, North Carolina
and STATE OF NORTH CAROLINA,

Petitioners

v.

ROBERT MITCHELL EDWARDS,

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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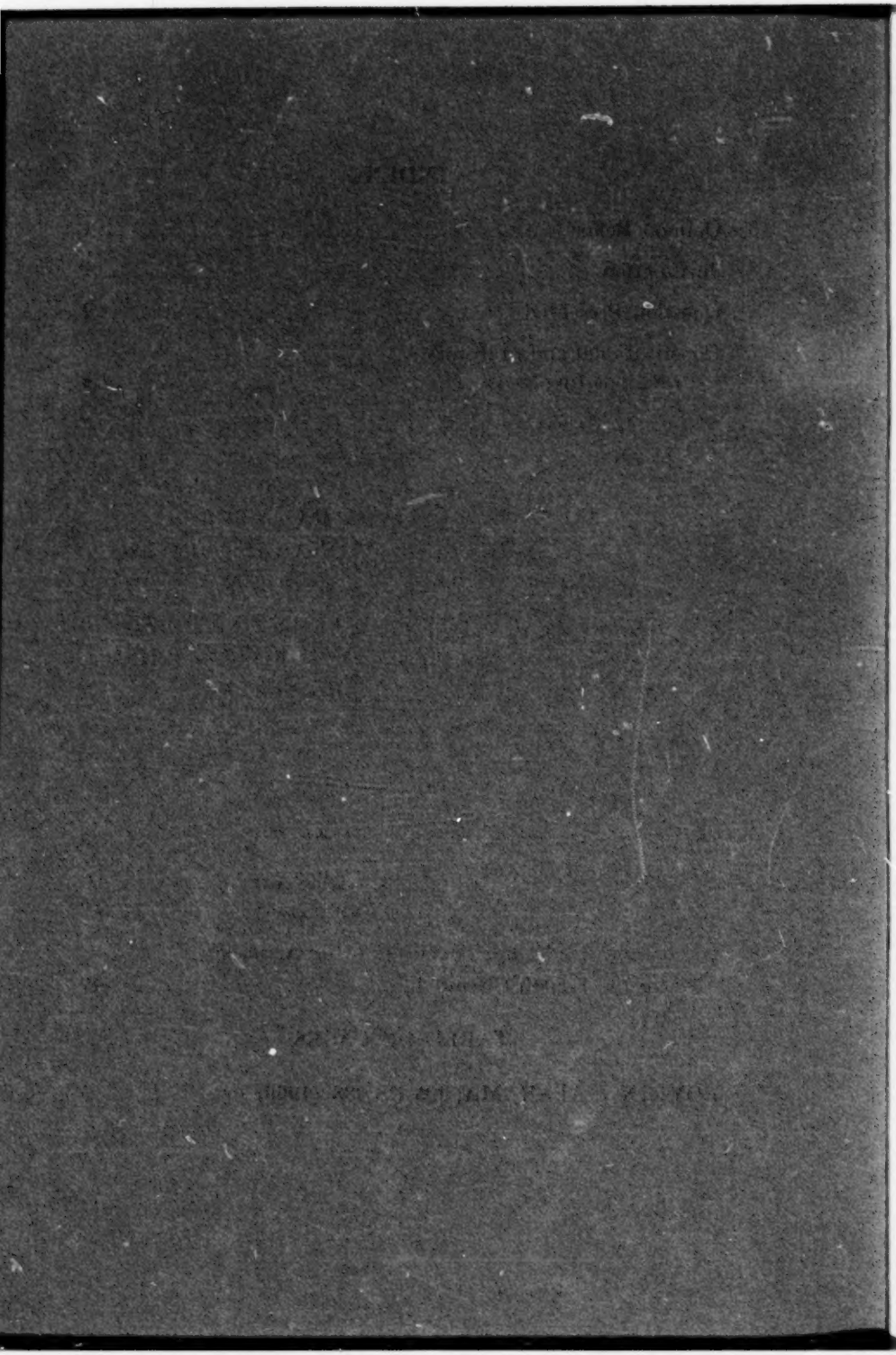

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ROBERT MITCHELL EDWARDS,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioners, Warden Sam P. Garrison and the State of North Carolina, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit in the case of Robert Mitchell Edwards v. Warden Sam P. Garrison, Central Prison, Raleigh, North Carolina, and State of North Carolina, No. 74-1791, filed October 13, 1975; petition to rehear denied November 11, 1975.

OPINION BELOW

The opinion of the United States Court of Appeals styled and filed as above is not yet reported but is printed as Appendix C to this petition (pp 17-23, *post*).

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JURISDICTION

The jurisdiction of this Court is invoked under 28 USC 1254(1).

QUESTION PRESENTED

WHETHER THE ATTEMPT BY DEFENDANT'S TRIAL JUDGE TO DETERMINE WHETHER OR NOT DEFENDANT'S GUILTY PLEA WAS VOLUNTARILY AND INTELLIGENTLY MADE MET THE STANDARDS FOR STATE HEARINGS SET OUT IN *TOWNSEND V. SAIN*, 372 US 293 (1963), SO THAT ON A HABEAS REVIEW, THE UNITED STATES DISTRICT COURT MIGHT PROPERLY ACCEPT THE STATE COURT'S FINDINGS, AS IT DID.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Sixth and Fourteenth Amendments.

STATEMENT OF THE CASE

On August 10, 1972, in the Superior Court of Forsyth County, North Carolina, Honorable Robert Collier, Judge Presiding, defendant, while represented by counsel, Fred G. Crumpler, Jr., Esquire, tendered a plea of guilty in case numbers 71 CR 41213, burglary; and 71 CR 40800, prison escape. Before Judge Collier accepted these pleas, he asked the defendant some fourteen questions in accordance with a formalized North Carolina procedure in order to determine whether or not defendant's plea was an intelligent, knowing and voluntary act. These questions are Appendix A to this petition (pp. 9-12, *post*). These questions covered the matters of defendant's mental capacity, his understanding of the charge and its penalty, his understanding of the right to plead not guilty and have a jury trial, a canvass of possible motivations for his plea, and a canvass of his ability to prepare a defense. In response to these questions, defendant acknowl-

edged among other things that he was guilty; stated he understood he could be imprisoned for as much as life plus seven years as a result of his plea, and stated that no one had made any promise or threat to him to influence him to plead guilty in this case. On the basis of the overall inquiry, findings were made, including one that "the plea of guilty by the defendant is freely, understandingly and voluntarily made without undue influence, compulsion or duress and without promise of leniency" and the plea was accepted. Defendant was sentenced to thirty years imprisonment. He unsuccessfully appealed to the North Carolina Supreme Court on the grounds that his sentence was cruel and unusual punishment, 282 NC 578, filed 26 January 1973.

On July 25, 1973, defendant filed an application for a post-conviction hearing in the Superior Court of Forsyth County, alleging as the last of three contentions:

> "3. It is respectfully submitted that the plea of guilty in this matter tendered to the Court by counsel for the petitioner is an involuntary plea of guilty, in that it was an induced plea, because the petitioner had been informed in the presence of reputable witnesses, that if he pleaded guilty that he would only get a sentence not to exceed twenty (20) years.
>
> A. That petitioner asked [*sic*] the questions asked by the Court in such a manner, so that the guilty plea would be accepted because, he had been informed that a plea bargain had been struck in this matter, and that upon a plea of guilty, he was only going to get a maximum of twenty (20) years. That this unkept bargain was given to the Petitioner by his privately retained counsel, Fred G. Crumpler, Jr. That petitioner had ever [*sic*] reason to believe him when he assured him that he would not get over twenty (20) years by the entry of a guilty plea.
>
> * * * * * * * * * *

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> C. It is clear that the authority of sentencing of this petitioner rested with no one but Judge Collier in this matter, and the assurance by Mr. Crumpler that he was only going to get twenty (20) years would be a promise that could not be kept by the one giving the promise. The petitioner was promised a sentence of not more than twenty (20) years upon his guilty plea, and he is entitled to relief . . ."

This application was denied without a hearing on August 1, 1973, by the Honorable Walter Crissman, Judge Presiding, on the grounds that there was no "new matter that needs to be developed in a plenary hearing." Defendant unsuccessfully sought a writ of certiorari from the North Carolina Court of Appeals to review this (73 SC 278 PC, August 29, 1973, unreported). He then applied to the United States District Court for the Middle District of North Carolina for a writ of habeas corpus on November 13, 1973, using the Court's form to which he attached his post-conviction application as a statement of the grounds for relief. The District Court denied the application on June 19, 1974, adopting the Magistrate's view that:

> "Petitioner's third allegation of constitutional infringement, it is submitted, does not require further consideration, *Johnson v. Copinger*, 420 F 2d 395 (4 Cir. 1969), for the reason that the Trial Court, after carefully questioning the petitioner, accepted his plea of guilty as voluntary and intelligent. Petitioner swore that no promises were made to him to induce the plea and that he understood the length of the sentences that could be imposed. He appealed and the Trial Court was affirmed, *State of North Carolina v. Edwards*, 282 NC App [*sic*] 578 (1973). Petitioner fails to bring this allegation within the ambit of *Santobello v. New York*, 404 US 257 (1971), because he presents no evidence of plea bargaining and the failure of any promise, requiring the Court to go behind the transcript of his plea of

> guilty. For that reason, his solemn affirmation in open court must stand. *Dean v. State of North Carolina*, 269 F Supp 986 (MDNC 1967)."

The District Court's decision and the Magistrate's order are set out as Appendix B to this petition. (pp 13-16, *post*). On appeal, the United States Court of Appeals for the Fourth Circuit ordered briefing and argument, and in an opinion filed October 13, 1975, reversed the District Court and remanded the case for evidentiary hearing. It reasoned that examination of a defendant alone will not "always" bring out into the open a promise that has induced plea because "sometimes" a defendant will deny a bargain out of a fear that a truthful response would jeopardize it. Therefore, the Court held the state plea proceeding to be "unreliable" due to the "unallayed apprehensions" of the defendant that plea bargaining was not permissible, and that the State court plea proceeding was "not binding" on federal courts under *Townsend v. Sain*, 372 US 293 (1963). A petition to rehear was denied by the Court on November 11, 1975; but on November 21, 1975, a stay of mandate was granted pending the filing of this application and disposition of it.

REASONS FOR GRANTING THE WRIT

I

THE DECISION BELOW HAS A SUBSTANTIAL IMPACT ON CRIMINAL JUSTICE IN THE STATE OF NORTH CAROLINA.

The decision by the Court of Appeals in this case has undermined the validity of over one hundred and sixteen thousand (116,000) guilty pleas made in North Carolina from 1967 through 1973 by creating a new basis for collateral attack concerning a matter the State has previously tried to deal with. In 1967 (over two years in advance of this Court's requirements in *Boykin v. Alabama*, 395 US 238 (1969),) North Carolina took steps to insure a minimum inquiry and to in-

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troduce uniformity into that inquiry on the matter of whether or not a plea was voluntarily and intelligently made. Until early 1974, North Carolina's method of dealing with such improper influences as threats and promises was to forthrightly question the accused under oath and to ask him substantially the following question:

> "Has the Solicitor, or your lawyer, or any policeman, law officer or anyone else made any promise or threat to you to influence you to plead (guilty) (nolo contendere) in this case?"

If the answer was no, then this was found as a fact. Now however, in view of the Court of Appeals' decision, it is as if the State had done nothing in this regard, and a mockery has been made of its imaginative and innovative efforts. Now all that a prisoner must say to obtain a hearing in the face of his sworn statements at trial to the contrary is that he conspired with his lawyer to mislead the Court, and went ahead and committed perjury in pursuance of the conspiracy. This denigrates the moral aspect of our law and particularly the equitable aspect governing habeas generally (see *Fay v. Noia*, 372 US 391 (1962)). It holds the government responsible for alleged conduct of counsel unknown to it despite the fact that the Constitution is a limitation on government conduct only. It is of such wide impact in North Carolina that if wrong, it should not be countenanced by this Honorable Court.

II

THE DECISION BELOW FAILS TO UTILIZE THE PRECEDENTS DECIDED BY THIS HONORABLE COURT CORRECTLY.

The Court of Appeals has done the above by way of an obviously incorrect decision. *Townsend v. Sain, supra,* at 318, places discretion in the District Court to accept or reject state court findings made after a reliable state court proceed-

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ing. It requires a new hearing only where there has been no resolution of the merits; a seriously inadequate fact-finding procedure has been employed; material facts have been inadequately developed; a full and fair hearing has been denied; the state conclusions are unsupported by the record; or there is substantial newly discovered evidence on a matter. The Court of Appeals found none of these in so many words. Instead, it said the state proceeding was "unreliable" because it did not "always" work because "sometimes" a defendant will lie. Its basis for this determination was a holding in a prior case where two example citations were made, neither of which occurred in the Fourth Circuit or North Carolina, and in which no note was taken of the fact that there must have been more than a million pleas nationwide in the ten years preceding. Petitioners earnestly urge the Court that just because a procedure does not "always" do something or because "sometimes" an accused will lie and thwart it does not render a fact-finding procedure seriously inadequate. No procedure is immune from this. Petitioners earnestly argue further that where the undisputed evidence from a defendant at trial is that no promises have been made him for his plea, then the merits of this matter have been resolved, and the material facts have been adequately developed. Even in the context of the much stiffer "conclusive" standard for precluding habeas review of federal convictions, this Court has characterized claims of this sort laid to the feet of government personnel as "close to the line" and "marginal." It has only allowed them where there has been substantial detail set out, some support by new evidence, and no possibility of estoppel due to the alleged involvement of the government, see *eg. Machribroda v. United States*, 368 US 487 (1960); *Fontane v. United States*, 411 US 213 (1972), none of which are the case here.

CONCLUSION

It is respectfully submitted that because of the above, this case is of sufficient importance for the Court to exercise its

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jurisdiction and issue a Writ of Certiorari to review the decision of the United States Court of Appeals, either to summarily reverse it, or to set the matter for briefing and argument.

Respectfully submitted.

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Appendix A

File 71 CR 41213
71 CR 40800
Film 71-8967

In The General Court of Justice
Superior Court Division

STATE OF NORTH CAROLINA
County of Forsyth

STATE OF NORTH CAROLINA

vs.

ROBERT MITCHELL EDWARDS

TRANSCRIPT OF PLEA

The Defendant, being first duly sworn, makes the following answers to the questions asked by the Presiding Judge:

1. Are you able to hear and understand my statements and questions? Answer: Yes

2. Are you now under the influence of any alcohol, drugs, narcotics, medicines, or other pills? Answer: No

3. Do you understand that you are charged with the (felony) of Burglary-2nd degree, Escape, Assault on public officer? Answer: Yes

4. Has the charge been explained to you, and are you ready for trial? Answer: Yes

5. Do you understand that you have the right to plead not guilty and to be tried by a Jury? Answer: Yes

6. How do you plead to these charges—Guilty, not Guilty, or nolo contendere? Answer: Guilty

7. (a) Are you in fact guilty? (Omit if plea is nolo contendere) Answer: Yes

   (b) (If applicable) Have you had explained to you and

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do you understand the meaning of a plea of nolo contendere? Answer: .....

8. Do you understand that upon your plea of (guilty) you could be imprisoned for as much as life plus 7 years
Answer: Yes

9. Have you had time to subpoena witnesses wanted by you? Answer: Yes

10. Have you had time to talk and confer with and have you conferred with your lawyer about this case, and are you satisfied with his services? Answer: Yes

11. Has the Solicitor, or your lawyer, or any policeman, law officer or anyone else made any promise or threat to you to influence you to plead (guilty) (nolo contendere) in this case? Answer: No

12. Has anyone violated any of your constitutional rights?
Answer: No

13. Do you now freely, understandingly and voluntarily authorize and instruct your lawyer to enter on your behalf a plea of (guilty) Answer: Yes

14. Do you have any questions or any statement to make about what I have just said to you? Answer: No

I have read or heard read all of the above questions and answers and understand them, and the answers shown are the ones I gave in open Court, and they are true and correct.

/s/ Robert M. Edwards
Defendant

Sworn to and subscribed before me this 10 day of Aug., 1972.

(Name illegible)
Clerk Superior Court

AOC-L Form 158
Rev. 10/69

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ADJUDICATION

The undersigned Presiding Judge hereby finds and adjudges:

I. That the defendant, Robert M. Edwards, was sworn in open Court and the questions were asked him as set forth in the Transcript of Plea by the undersigned Judge, and the answers given thereto by said defendant are as set forth therein.

II. That this defendant, was represented by attorney, Fred Crumpler, who was (court appointed); and the defendant through his attorney, in open Court, plead (guilty), to 2nd degree Burglary, Escape, Assault on public officer as charged in the bill of indictment and lesser offense and in open Court, under oath, further informs the Court that:

1. He is and has been fully advised of his rights and the charges against him;

2. He is and has been fully advised of the maximum punishment for said offense (s) charged, and for the offense (s) to which he pleads (guilty);

3. He is guilty of the offense (s) to which he pleads guilty;

4. He authorizes his attorney to enter a plea of (guilty) to said charge (s);

5. He has had ample time to confer with his attorney, and to subpoena witnesses desired by him;

6. He is ready for trial;

7. He is satisfied with the counsel and services of his attorney;

And after further examination by the Court, the Court ascertains, determines and adjudges, that the plea of (guilty), by the defendant is freely, understandingly and voluntarily made, without undue influence, compulsion or duress, and without promises of leniency. It is, therefore, ORDERED that this

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plea of (guilty) be entered in the record, and that the Transcript of Plea and Adjudication be filed and recorded.

This 10 day of Aug., 1972.

/s/ Robert A. Collier, Jr.
Judge Presiding

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Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ROBERT MITCHELL EDWARDS,	)	
	)	
Petitioner,	)	
	)	
v.	)	C-377-G-73
	)	
WARDEN SAM P. GARRISON, Central Prison, Raleigh, N. C. and STATE OF NORTH CAROLINA,	)	
	)	
Respondent.	)	

ORDER

WARD, District Judge

This action was referred to United States Magistrate, Herman Amasa Smith, for preliminary review pursuant to the provisions of 28 U.S.C. § 636 (b) and Local Rule 50, Rules of Practice and Procedure. The Magistrate has submitted to the Court a Memorandum and Recommendation.

The Court has examined the files and records of the above action and has independently determined that the petition is without merit, and that the relief sought should be denied for the reasons appearing in the Magistrate's Memorandum and Recommendation, which is attached and made a part of this Order.

IT IS HEREBY ORDERED that the application for a writ of habeas corpus of Robert Mitchell Edwards, filed November 13, 1973, be and is hereby denied and the action dismissed.

In accordance with this Court's liberal policy relative to the

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filing of actions in forma pauperis, 28 U.S.C. § 1915, and in accordance with the intent of Rule 24, Federal Rules of Appellate Procedure, if the petitioner desires to do so, permission to appeal in forma pauperis is hereby granted.

IT IS FURTHER ORDERED that the Clerk mail a certified copy of this Order to the petitioner at his place of confinement and two certified copies to the Attorney General of the State of North Carolina.

/s/ Hiram H. Ward
United States District Judge

June 19, 1974

A True Copy
Teste:
Carmon J. Stuart, Clerk
By: W. R. (illegible)
Deputy Clerk

C-377-G-73

MAGISTRATE'S MEMORANDUM AND RECOMMENDATION

Robert Mitchell Edwards

Petitioner is a prisoner of the State of North Carolina. On November 12, 1973, he filed here an application for a writ of habeas corpus and was allowed to proceed without the prepayment of fees. 28 U.S.C. § 1915.

Petitioner was indicted in separate bills of indictment charging him with burglary and felonious escape. On August 7, 1972 in Forsyth County Superior Court he entered pleas of guilty to burglary in the second degree and to felonious escape. He was carefully arraigned by the Court and indicated that he understood that upon his plea of guilty he could be sentenced to life imprisonment. He also swore that the solicitor, his lawyer or no one else had made any promises or threats to influence his plea of guilty. The Court found the defendant's plea to be voluntary and accepted it. The two actions were consolidated for judgment and a sentence of not less than 30 years or more than life imprisonment was imposed.

Petitioner alleges that he is entitled to habeas corpus relief for the reasons that:

(1) The 30 year sentence amounts to cruel and unusual punishment.

(2) He did not commit the crime of burglary because no one was asleep in the house he entered.

(3) His plea of guilty was involuntary because he was promised he would receive but 20 years.

The respondent has filed an answer and motion to dismiss.

It is submitted that the respondents' motion should be granted for the reason that allegations numbered (1) and (2) present no federal question justifying habeas corpus relief.

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See *Wright v. Maryland Penitentiary, State of Maryland*, 429 F. 2d 1101, 1103 (4th Cir. 1970); *United States v. Tucker*, 404 U.S. 443, 446 and 447 (1972). The North Carolina Burglary Statute, 14-51, does not require one to be sleeping in a dwelling. Petitioner was punished in accordance with the provisions of N. C. Gen. Stat. 14-52.

Petitioner's third allegation of constitutional infringement, it is submitted, does not require further consideration, *Johnson v. Copinger*, 420 F. 2d 395 (4th Cir. 1969), for the reason that the Trial Court, after carefully questioning the petitioner, accepted his plea of guilty as voluntary and intelligent. Petitioner swore that no promises were made to him to induce the plea and that he understood the length of the sentence that could be imposed. He appealed and the Trial Court was affirmed. *State of North Carolina v. Edwards*, 282 N. C. App. 578 (1973). Petitioner fails to bring this allegation within the ambit of *Santobello v. New York*, 404 U.S. 257 (1971) because he presents no evidence of plea bargaining and the failure of any promise, requiring the Court to go behind the transcript of his plea of guilty. For that reason, his solemn affirmation in open court must stand. *Dean v. State of North Carolina*, 269 F. Supp. 986 (M.D.N.C. 1967).

For the foregoing reasons, it is respectfully submitted that the action should be dismissed.

/s/ Herman Amasa Smith

United States Magistrate

June 18, 1974

Appendix C

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 74-1791

Robert Mitchell Edwards,

Appellant,

v.

Warden Sam P. Garrison, Central Prison, Raleigh, N. C., and State of North Carolina,

Appellee.

Appeal from the United States District Court for the Middle District of North Carolina. Hiram H. Ward, District Judge.

- - - -

No. 74-2038

Donald Bynum Bass,

Appellant,

v.

United States of America,

Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Joseph H. Young, District Judge.

- - - -

Argued June 12, 1975 Decided Oct. 13, 1975

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Before HAYNSWORTH, Chief Judge, and WINTER and CRAVEN, Circuit Judges.

W. Donald Carroll, Jr., [court-appointed counsel], (Helms, Mulliss and Johnston on brief) for Appellant in Nos. 74-1791 and 74-2038; Richard N. League, Assistant Attorney General of North Carolina, (Rufus L. Edmisten, Attorney General of North Carolina, on brief) for Appellees in No. 74-1791; and Leonard M. Linton, Jr., Assistant United States Attorney, (Jervis S. Finney, United States Attorney, on brief) for Appellee in No. 74-2038.

WINTER, Circuit Judge:

These appeals present common questions of when and under what circumstances prisoners, convicted upon their pleas of guilty, are entitled to an evidentiary hearing on their allegations that their pleas were not voluntary when their allegations to establish involuntariness apparently conflict with their representations made at the time that their pleas were accepted.

Robert Mitchell Edwards, a North Carolina state prisoner, alleged that he was sentenced to a term of thirty years to life in violation of an undisclosed plea bargain that he would receive a maximum sentence of twenty years, although when his plea was taken he denied that any promises had been made to him to induce his guilty plea.

Donald Bynum Bass, a federal prisoner sentenced to a term of six years and the mandatory special parole term of three years for narcotics offenders, 21 U.S.C. § 841, alleged in substance that he pleaded guilty as part of a plea bargain that the government would recommend a maximum sentence of three years. Although he conceded that he told the district court at his arraignment that he knew the bargain was not binding on the court and nonetheless he still wished to plead guilty, he now alleges that he made this statement solely because his attorney had advised him to give this answer and that he would not have tendered the plea if he had not been promised that the court would be bound by the recommended sentence or would follow the recommendation.

In each case the district court summarily denied relief. In each, we conclude that the judgment must be vacated and the case remanded for an evidentiary hearing.

We consider the appeals separately.

I.

No. 74-1791

A. Edwards was convicted of burglary and felonious escape

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upon his pleas of guilty. In proceedings in the state courts and in the district court. he alleged that he was being unconstitutionally confined because (1) his sentence of thirty years to life was in violation of N.C.G.S. 14-52 which provides for possible sentences of a term of years *or* life imprisonment; (2) he did not commit burglary because at the time he broke into the house it was twilight and no one was asleep; and (3) his plea of guilty was entered only after he was promised by his attorney that he would receive a maximum sentence of twenty years.

We see no merit in Edwards' first two grounds of collateral attack.[1] Since he could have received a sentence of life imprisonment for a conviction of burglary, his receipt of thirty years to life presents no constitutional impropriety despite its possible conflict with an overly technical construction of N.C.G.S. 14-52. Under North Carolina law, we perceive no requirement that there be an individual asleep in the house which is broken into in order for burglary to be committed. Since there is no constitutional requirement that a state court establish a factual basis for a guilty plea before entering judgment on the plea, Freeman v. Page, 443 F. 2d 493 (10 Cir. 1971), it was unnecessary to show whether there was or was not someone asleep in the house. Edwards' plea of guilty to the crime with which he is charged is sufficient to sustain conviction of that crime as long as the plea was knowingly and voluntarily made.

When Edwards tendered his plea in the state court, he was required, in accordance with the then state practice, to fill out and execute under oath a questionnaire entitled "Transcript of Plea." Among the questions answered were, "Do you understand that upon your plea of guilty you could be imprisoned for as much as life + 3 years?" which Edwards an-

1. Edwards' court-appointed counsel in this court agrees that these contentions do not provide a sufficient basis for habeas corpus relief. We consider them, nevertheless, since they were raised by Edwards when he was proceeding *pro se*.

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swered affirmatively, and "Has the Solicitor, or your lawyer, or any policeman, law officer, or anyone else made any promise or threat to you to influence you to plead guilty in this case?" which Edwards answered in the negative. The form which Edwards completed posed no other inquiry which might have revealed any possible plea bargain by and between him or his attorney and the prosecutor.

Notwithstanding his affirmative answer to the first question and his negative answer to the last question, Edwards' sworn petition for a writ of habeas corpus alleged that he was induced to plead guilty by a promise, made by his court-appointed counsel in the presence of witnesses, that if he pleaded guilty his sentence would not exceed twenty years. His petition was summarily dismissed by the district court for the reason that it presented "no evidence of plea bargaining and the failure of any promise, requiring the Court to go behind the transcript of his plea of guilty. For that reason, his solemn affirmation in open court must stand."

B. Without further evidentiary development, Edwards' allegation of the promise made to him by his court-appointed attorney may be read to constitute an allegation of a plea bargain. Any plea bargain that might have been made was certainly not spread on the record. Although Edwards represented to the trial court that no one, including his lawyer, had made any promises or threats to influence him to plead guilty, he was not asked specifically about any plea bargain. We therefore conclude that under Crawford v. United States, ... F.2d..... (4 Cir. July 15, 1975), and more particularly under Walters v. Harris, 460 F.2d 988 (4 Cir. 1972), Edwards has made allegations which entitle him to the opportunity to show involuntariness of his plea, notwithstanding his answers at his arraignment.

In *Crawford*, we held that in collateral proceedings a federal prisoner ordinarily will not be permitted to controvert the statements made by him at the time that he tendered a plea

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of guilty "unless and until he makes some reasonable allegation why this should not be so." ..... F.2d .....[2] In our view, the same principle applies to the representations made by an accused to a state court when he tenders a plea of guilty. *Crawford* recognized, however, that an accused might seek to conceal a plea bargain because "[t]he accused may be fearful that full disclosure would jeopardize the bargain," ..... F.2d at ....., noting with approval our decision in *Walters*. We think that Edwards' case fits into the exception thus recognized.

In *Walters*, the accused, at his arraignment, repeatedly denied that any promises had been made to him to induce him to plead guilty. Nonetheless, after his plea was accepted and he was sentenced to two 20-year concurrent sentences, he sought to vacate his sentence alleging that, through his attorney, he had bargained for a 10-year sentence as a condition of making his plea. We held that if defendant had made an unkept plea bargain his sentence would be stricken. We specifically rejected the notion that Walters' allegation of an unkept plea bargain did not require evidentiary exploration because of his denial at his arraignment that any promise had induced his plea. Recognizing that [e]xamination of the defendant alone will not always bring out into the open a promise that has induced his guilty plea," because "[i]t is well known that a defendant will sometimes deny the existence of a bargain . . . out of fear that a truthful response would jeopardize the bargain, we held that "[t]he danger that a Rule 11 inquiry

2. In *Crawford*, we sustained the district court's summary denial of relief. Factually, *Crawford* differs from Edwards' case in two respects. First, the district court to which Crawford tendered his plea raised the question of a plea bargain and, in that context, Crawford denied that any promise had been made to him that he would receive a lighter sentence if he pleaded guilty. In contrast, "plea bargain" was never mentioned to Edwards and he could well have not understood that he was expected to reveal a plea bargain in response to general inquiry about promises to induce him to plead guilty. Second, even if he so understood, Edwards was not advised or reassured about the effect of disclosure of a plea bargain. Crawford was told that "[i]t's all right" for his attorney and the prosecutor to have negotiated and reached a bargain although the bargain would not be binding on the court.

will not uncover a plea bargain is sufficient that the defendant's response alone to a general Rule 11 inquiry cannot be considered conclusive evidence that no bargain has occurred." 460 F.2d at 993.

Although Walters was a federal prisoner prosecuted in a federal court and Edwards is a state prisoner prosecuted in a state court, the same reasoning applies. In either case the unallayed apprehensions of the accused make general inquiries about inducements unreliable in unearthing plea bargains.[3] Not having been asked if he claimed that a plea bargain had been made, Edwards' denial, at the time he entered his plea, that any promise had induced him to tender it does not foreclose inquiry into his later allegation suggesting that a plea bargain may have been made. The district court was in error in giving conclusive effect to Edwards' answers as set forth in the Transcript of Plea and summarily denying his application for a writ of habeas corpus. It must conduct an evidentiary hearing into the correctness of Edwards' later allegations and grant or withhold relief according to the facts as they are found.

We fully recognize that our decision here is of limited precedential significance. In oral argument, we were told that North Carolina has amended its trial practice with respect to the taking of pleas of guilty. The current North Carolina prescribed Transcript of Plea (now termed "Transcript of Negotiated Plea") poses questions to the prosecutor, the accused, and his lawyer designed to elicit a full disclosure of any plea negotiations and any bargain that was reached. Commendably, North Carolina has responded to the admonition to district judges contained in *Walters*. It is therefore unlikely that a case like Edwards' will arise in North Carolina in the future.

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3. Because of the inherent unreliability of a general inquiry about inducements to plead guilty without specific inquiry as to any plea bargain and assurance that a plea bargain is not improper, even if not binding on the court, a state court's determination that a plea accepted after only general inquiry was freely and voluntarily made without evidentiary exploration of a subsequent allegation that there was an unfulfilled plea bargain is not binding on a federal court under Townsend v. Sain, 372 U. S. 293, 312-13 (1963).

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